

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.31440 of 2016

Arising Out of PS. Case No.- Year-1111 Thana- District-

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1. Sachidanand Prasad, wrongly stated Sachidanand Swarnkar
 2. Vishwanath Prasad, wrongly stated Vishwanath Swarnkar
 3. Purrushotam Prasad, wrongly stated Purroshotam Swarnkar
 4. Dharamraj Prasad, wrongly stated Dharamraj Swarnkar All sons of Late Ram Swaroop Ram, resident of Village- Bichali Kuan (wrongly stated Dangi Tola) Rajgir, P.S. Rajgir, District- Nalanda.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Jadunath Prasad, S/o Late Sukhdeo Yadav
3. Ravindra Rai, S/o Panchi Rai
4. Yogendra Prasad S/o Late Dhanu Mistri
5. Vinod Ypadhya, S/o Late Lakhan Upadhya
6. Rajendra Thakur, S/o Late Kanhai Thakur, All residents of Village Dangi Tola, Rajgir, P.S. Rajgir, District- Nalanda.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Gouranga Chatterjee, Adv
For the Opposite Party/s : Mr.Md. Sufiyan, APP

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 19-09-2019

Heard learned counsel for the parties.

2. By the impugned order dated 15.12.2015 passed in Misc. Case No.397 of 2015, the learned Sub Divisional Judicial Magistrate, Rajgir initiated a proceeding under Section 147 Cr.P.C. between the parties over Plot No.4247 under Khata No.753 area 17 decimals. The petitioner challenged the aforesaid initiation before the learned Sessions Judge, Nalanda at Biharsharif in Cr. Revision No.01 of 2016 which was heard by learned 2nd Additional



Sessions Judge, Biharsharif, Nalanda and by order dated 15.12.2015, the criminal revision application was dismissed. Both the orders are under challenge in this application under Section 482 Cr.P.C.

3. The impugned order dated 15.12.2015 reveals that the Circle Officer and the Deputy Collector Land Reforms, Rajgir submitted a report dated 02.12.2015 stating therein that there is dispute of right of user of way between the parties on Plot No.4247 under Khata No.753 area 17 decimals and there is apprehension of breach of peace for that dispute. Being satisfied with the report of D.C.L.R. and the Circle Officer the learned S.D.J.M. initiated the proceeding.

4. Challenge is on the ground that admittedly the said plot is purchased plot of the petitioners. The petitioners had already adjoining Plot No.4248 purchased years back. The enquiry report of the D.C.L.R. dated 02.12.2015 which is basis of the initiation of the impugned proceeding under Section 147 Cr.P.C. is at Annexure-H to the counter affidavit and the same would reveal that the claimed Rasta is in between Plot No.4247 and 4248. Both plots are of the petitioners and the claimed Rasta is covered by a concrete roof joining the houses at Plot No.4248 and 4247. Moreover, the report does not disclose that who had reported to the



authority concerned that there was Rasta and the same was being used by the people. Annexure-I is measurement report submitted by the local Amin on the order of Circle Officer which shows that Plot No.4247 was measured by him and different portions of the plot were found in possession of different person including Smt. Shanti Devi, Smt. Indrani Devi, Smt. Shobha Devi, Ranjeet Kumar, Ramswaroop Ram and Ors but most of those person are not party in the proceeding under Section 147Cr.P.C. Again the measurement report does not show the location and status of the Rasta whether on Plot No.4247 or on Plot No.4248. Therefore, the basis of initiation of the proceeding i.e. report of the D.C.L.R. is itself vague one. As such, the impugned proceeding is vitiated in law. The learned Sessions Judge did not appreciate the aforesaid serious infirmity.

5. Learned counsel for the opposite party submits that the family members of all the females named in the measurement report are already parties to the proceeding and they might be brought on the record even during pendency of the proceeding. If the D.C.L.R. has not named the person, who were examined by him, the proceeding need not be quashed and the final adjudication would be only after examination of the witnesses.



6. Since the basis of initiation of impugned proceeding is based on vague report, it cannot be sustained in law to prevent the abuse of the process of the Court. Hence, the impugned order is hereby quashed and this application is allowed.

7. However, fresh proceeding according to law, if the circumstance so requires may be initiated.

(Birendra Kumar, J)

Nitesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	23.09.2019
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